



The Attorney General of Texas

December 22, 1978

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Honorable Mike Renfro
Travis County Judge
Travis County Courthouse Annex
Austin, Texas 78767

Open Records Decision No. 218

Re: Whether letters to a county commissioner complaining about the actions of a county employee are available to that employee.

Dear Judge Renfro:

You have requested our decision as to whether the identity of persons complaining to a county commissioner about the actions of a county employee are available to that employee under section 3(a)(2) of the Open Records Act, article 6252-17a, V.T.C.S. You state that, during the first week of September, 1978, a county commissioner received three letters containing various allegations regarding the conduct of the Personal Bond Director of Travis County. The official's employment has been terminated and he has been furnished copies of the letters of complaint, except that all identifying features are deleted therefrom. The former official now seeks disclosure of the identity of each complainant. You contend that this information is excepted from disclosure by section 3(a)(9), as

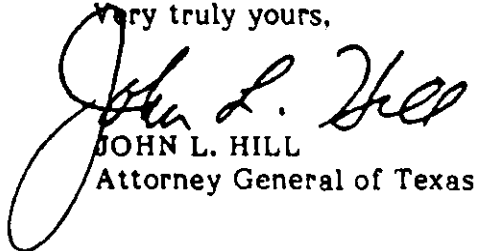
private correspondence and communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy.

The proviso to section 3(a)(2) of the Act requires disclosure to every employee of all information in his personnel file. We dealt with a similar situation in Open Records Decision No. 172 (1977), in which a former Texas Army National Guard officer sought disclosure of complaints against him by various persons under his command. It was necessary to that decision to balance two directly conflicting interests: the employee's right to all information in his personnel file, guaranteed by the proviso to section 3(a)(2), and the government's right to protect its confidential sources by invoking the informer's privilege, an exception recognized by the Open Records Act as "information deemed confidential by law," pursuant to section 3(a)(1). While recognizing that no fixed rule is justifiable where two such significant interests are in conflict, we struck the balance in Open Records Decision No. 172 in favor of the informer's privilege.


In the present instance, we do not believe that the informer's privilege is sufficient to justify withholding the identity of these complainants. Unlike the circumstances in Open Records Decision No. 172, the letters here do not describe conduct which is clearly criminal. The tone of each letter, when coupled with the consideration that each is addressed to a county commissioner rather than to the appropriate law enforcement official, indicates that the complainants expected administrative redress rather than criminal prosecution. Furthermore, since none of the complainants were at the time of their letters employed by the county, the threat of retaliation is somewhat less than was present in Open Records Decision No. 172.

In our opinion, the same balancing test is required when any other significant interest is in conflict with the employee's interest secured by the section 3(a)(2) proviso. In this instance you have claimed a privacy interest under section 3(a)(9). We have not heretofore determined the precise scope of that privacy interest, nor the extent to which it may differ from the privacy interests of sections 3(a)(1) and 3(a)(2). In our opinion it is not necessary to do so here since whatever privacy interest may exist vis-a-vis the public it is insufficient to overcome the employee's 3(a)(2) interest. It is therefore our decision that the identity of these complainants should be disclosed to the Personal Bond Director.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant


C. ROBERT HEATH, Chairman
Opinion Committee

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